

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: LTDS CORPORATION, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-03-51
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ORDER ESTABLISHING ISSUES ON APPEAL

(Issued November 23, 2004)

On October 22, 2003, LTDS Corporation (LTDS) filed with the Utilities Board (Board) a complaint against Qwest Corporation (Qwest). In its complaint, LTDS asserted its right to certain services pursuant to an interconnection agreement between LTDS and Qwest. In addition, LTDS requested payment of credits it claimed were due pursuant to the terms of the "Service Order Provisioning Commitment Missed" penalties in the interconnection agreement. Finally, LTDS sought whatever additional relief the Board deemed lawful and supported by the record.

On November 25, 2003, the Board docketed the proceeding as a formal contested case and assigned the docket to the Board's administrative law judge

(ALJ) to establish a procedural schedule, set a hearing date, and conduct the proceedings. A hearing was held in this docket on May 20 and 21, 2004.

Supplemental testimony and post-hearing briefs were filed by both parties on July 16, 2004, and reply briefs were submitted on August 6, 2004.

On October 22, 2004, a proposed decision was issued by the ALJ stating that it was improper for Qwest to deny LTDS's service order. The proposed decision also stated that LTDS was not entitled to recovery of damages because LTDS "did not plead, prove, nor request a common law contractual damages remedy." (Proposed Decision, p. 71).

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the ALJ be filed within 15 days of the date the decision is issued. An appeal was timely filed by LTDS on November 5, 2004. Qwest filed a response to the appeal on November 19, 2004.

Pursuant to 199 IAC 7.8(2)"d," the Board must issue a ruling on the issues to be decided on appeal within 20 days of the date of the notice of appeal. The Board will set out the issues that will be considered on appeal and will review the record established in this docket to reach a final decision. The Board may request additional information from the parties if the receipt of such information is necessary to allow the Board to reach a final decision.

ISSUES FOR CONSIDERATION ON APPEAL

1. Whether LTDS is entitled to damages.

LTDS asserts that the ALJ erred in refusing to award damages to LTDS. Specifically, LTDS states that Qwest willfully violated the provisions of the interconnection agreement and, as a result, LTDS should have received an award of damages either measured by the credits provision of the interconnection agreement or on the evidence of other damages, including contract damages.

Qwest responds by stating that the ALJ's proposed decision denying damages to LTDS was correct. Qwest maintains that the record does not support an award of damages pursuant to the interconnection agreement and that LTDS did not plead, prove, nor request common law contract damages and, therefore, is not entitled to them.

The Board finds that this issue should be considered on appeal.

Neither party requested an opportunity to file briefs or present argument with respect to this appeal. The Board will analyze the record established in this docket to reach a final decision, reserving the right to require additional information or argument if necessary. The Board also reserves the right to address other issues that it finds to be relevant during its consideration of the proposed order.

IT IS THEREFORE ORDERED:

The issue to be decided by the Utilities Board on appeal is described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 23rd day of November, 2004.